IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.248 of 2000 with Cross Objection No.545 of 2000 with FAOs (MVA) No.252 of 2000 with Cross Objection No.463 of 2000, FAO (MVA) No.253 of 2000 with Cross Objection 453 of 2000 and FAO (MVA) No.293 of 2000 with Cross Objection No.568 of 2000.

Reserved on: 06.08.2007.

Decided on: ***August 21, 2007***

For title, please see over-leaf:

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants: }
} **Please see over-leaf:**
For Respondents: }

Kuldip Singh, Judge

This judgment shall dispose of FAO No.248 of 2000 with Cross Objection No.545 of 2000, FAO No.252 of 2000 with Cross Objection No.463 of 2000, FAO No.253 of 2000 with Cross Objection 453 of 2000 and FAO No.293 of 2000 with Cross Objection No.568 of 2000 arising out of common award dated 1.3.2000 passed by Motor Accident Claims Tribunal, Shimla. FAO No.248 of 2000, FAO No.252

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[1] *Whether the reporters of the local papers may be allowed to see the Judgment ? Yes*

of 2000, FAO No.253 of 2000 and FAO No.293 of 2000 have arisen out of MAC Petitions No.47-S/2 of 1998, 60-S/2 of 1998, 46-S/2 of 1998 and 62-S/2 of 1998 respectively. The parties are referred herein in the same manner as in the impugned award.

The facts, in brief, are as follows:-

FAO No.248/2000 with Cross Objection No.545/2000:

2. Kumari Mamta aged 18 years, student of +1 died in the accident of bus bearing No.HP 07-2830 on 27.11.1997 owned by Himachal Road Transport Corporation (for short 'Corporation'). The accident took place due to rash and negligent driving by the driver of the bus near place *Pashad* as a result of which bus fell into a *Nallah* and several persons died. The claimants are parents and two brothers of deceased Kumari Mamta. They have claimed Rs.10 lacs compensation.

FAO No.252/2000 with Cross Objection No.463/2000:

3. Maheshwar Singh, aged 23 years, died in the accident of bus bearing No.HP-07-2830 on 27.11.1997. The claimants are widow, minor son and parents of deceased Maheshwar Singh. According to the petitioners, deceased Maheshwar Singh was working as Electrical Contractor and earning Rs.6000/- per month. They have claimed Rs.12 lacs compensation.

FAO No.253/2000 with Cross Objection No.453/2000:

4. Balwant Singh, aged 21 years, student of B.A. Final, died in the accident of bus bearing No.HP-07-2830 on 27.11.1997. The

claimants are parents and sisters of deceased Balwant Singh. The deceased used to assist his father in cultivation and agriculture operations. The petitioners have claimed Rs.10 lacs compensation.

FAO No.293/2000 with Cross Objection No.568/2000:

5. Kumari Lata, aged 18 years, student of +1, died in the accident of bus bearing No.HP-07-2830 on 27.11.1997. The petitioners are parents and minor brother. They have claimed Rs.5 lacs compensation.

6. The Corporation contested the petitions and filed replies and had taken similar stand in all the petitions. It was denied that accident took place due to any act of rashness or negligence on the part of the driver or the owner of the bus. The compensation claimed is excessive. The occurrence of accident is, however, not denied nor it has been denied that the persons, for whose death compensation has been claimed, died as a result of accident.

7. The tribunal allowed the petitions by common award dated 1.3.2000 and has held that accident took place due to rash and negligent driving on the part of driver of the bus.

8. In MAC Petition No.47-S/2 of 1998, it was held that compensation of Rs.1 lac is just and reasonable for the death of Kumari Mamta. A sum of Rs.50,000/- was already awarded in that case to the petitioners as interim compensation under no fault liability, therefore, the tribunal awarded Rs.50,000/- to the petitioners along with 12% interest per annum from the date of filing of the petition to

the date of payment. The compensation money was ordered to be shared by the father and mother of the deceased in the ratio of 1:4.

9. In MAC Petition No.60-S/2 of 1998, it was held that compensation of Rs.4 lacs is just and reasonable for the death of Maheshwar Singh. The tribunal has recorded a finding that an amount of Rs.50,000/- was already paid to the petitioners as interim compensation under no fault liability, therefore, the tribunal awarded Rs.3,50,000/- to the petitioners along with 12% interest per annum from the date of filing of the petition to the date of payment. An amount of Rs.1,40,000/- with proportionate interest was ordered to be paid to widow, Rs.1,25,000/- with proportionate interest to minor child, Rs.75,000/- with proportionate interest to mother and remaining amount of Rs.10,000/- with proportionate interest to the father of the deceased.

10. In MAC Petition No.46-S/2 of 1998, it was held that compensation of Rs.2,31,000/- is just and reasonable for the death of Balwant Singh. A sum of Rs.50,000/- was already awarded in that case to the petitioners as interim compensation under no fault liability, therefore, the tribunal awarded Rs.1,81,000/- to the petitioners along with 12% interest per annum from the date of filing of the petition to the date of payment. The compensation money was ordered to be paid to the father and mother of the deceased in the ratio of 1:4.

11. In MAC Petition No.62-S/2 of 1998, it was held that compensation of Rs.1 lac is just and reasonable for the death of

Kumari Lata. A sum of Rs.50,000/- was already awarded in that case to the petitioners as interim compensation under no fault liability, therefore, the tribunal awarded Rs.50,000/- to the petitioners along with 12% interest per annum from the date of filing of the petition to the date of payment. The compensation money was ordered to be shared by the father and mother of the deceased in the ratio of 1:4.

12. FAO No.248 of 2000 has been filed by the petitioners for enhancement of compensation and in this appeal Corporation has filed Cross Objection No.545 of 2000. FAO No.293 of 2000 has been filed by the petitioners for enhancement of the compensation and in this appeal Corporation has filed Cross Objection No.568 of 2000. FAO No.252 of 2000 has been filed by the Corporation and in this appeal the petitioners have filed Cross Objection No.463 of 2000 for enhancement. FAO No.253 of 2000 has been filed by the Corporation and in this appeal petitioners have filed Cross Objection No.453 of 2000 for enhancement.

13. I have heard the learned counsel for the parties and gone through the record.

14. The learned counsel for the petitioners / claimants has urged that less compensation has been awarded to the petitioners / claimants. The learned counsel for the Corporation has submitted that it has not been proved that the accident took place due to rash and negligent driving on the part of the driver of the bus. In any case, excess compensation has been paid to the petitioners.

15. The learned tribunal vide order dated 26.3.1999 had consolidated cases, namely, i) Udham Singh vs. HRTC No.46-S/2 of 98, ii) Baldev Singh vs. HRTC, No.47-S/2 of 98, iii) Joginder Singh vs. HRTC, No.62/S/2 of 98 and iv) Kartar Singh vs. HRTC, No.64-S/2 of 98 and thereafter evidence was recorded.

16. PW-1 Vijay Kumar, Head Constable, Police Station, Chopal has proved F.I.R. No.148/97 Ext.P-1 dated 27.11.1997. PW-2 Nirmala Devi has stated that Maheshwar Singh was her husband. He was 25 years of age. He was electrical contractor. In addition to this, he used to purchase standing apple crops from orchards and sell the same, his income was Rs.6000/- per month. Petitioner No.2 (in MACC No.60-S/2 of 1998) is her child from the wedlock of the deceased. Petitioners No.3 and 4 (in MACC No.60-S/2 of 1998) are the parents of deceased. All of them were dependant upon the deceased. Ext.P-2 is certificate of date of birth of her husband, her husband died in the accident of Bus of HRTC. PW-3 Joginder Singh has stated that Maheshwar Singh was his son. The age of his wife is 46 years whereas his own age is 55 years. Kumari Lata was his unmarried daughter. Maheshwar Singh and Kumari Lata died in HRTC bus accident on 27.11.1997. Lata was aged 19 years. She was student of +2 class. Maheshwar Singh was a contractor. His income was Rs.6000/- per month. Ext.P-3 is the matriculation examination certificate of Lata. All of them were dependant upon Maheshwar Singh. In cross examination, he has admitted that they have received

Rs.50,000/- on account of compensation but he is not aware whether the amount was paid by Government or HRTC. PW-4 Udham Singh has stated that Balwant Singh deceased was his only son. He was 22 years of age. He was studying in B.A. Final in SD College, Nerwa. He died in the bus accident. He has now three daughters who are petitioners 3 to 5 in the case (In MACC No.46-S/2 of 1998). Ext.P-4 is the Photostat copy of matriculation examination certificate of Balwant Singh. His son used to work with him in agricultural pursuits. In cross examination, he has stated that he had received Rs.50,000/- on account of Passenger Insurance Scheme. PW-5 Baldev Singh has stated that his daughter Mamta aged 18 years died in the bus accident. She was student of 10+1. Ext.P-5 is the copy of her matriculation certificate. She was a student of Government Higher Secondary School, Nerwa. In cross examination, he has stated that his wife had been paid Rs.50,000/- on account of ex-gratia grant. PW-6 Sham Lal, Secretary, Gram Panchayat, Devat, Tehsil Chopal has proved extract of *Parivar Register* Ext.PW-6/A and Ext.PW-6/B regarding the families of Udham Singh and Joginder Singh. PW-9 Maheshwar Singh son of Sunder Singh has stated that he knew deceased Maheshwar Singh son of Joginder Singh. He was Electrician. He used to do pruning job for others. In the year 1996, he had employed said Maheshwar Singh for pruning in his orchard. He was paid Rs.150/- per day plus two meals and tea etc. He was also engaged by him for doing electrician work. He was paid labour

charges at the rate of Rs.30/- per point. He used to purchase standing apple crops. The Corporation did not produce any evidence as per statement of its counsel dated 23.2.2000.

17. It has come in the statement of PW-8 Kartar Singh that accident took place due to fast driving of the bus by its driver. The testimony of this witness is corroborated by the contents of F.I.R. Ext.P-1 which has been proved on record by PW-1 Vijay Kumar. There is no rebuttal to the evidence led by the petitioners. The tribunal has rightly returned the finding that the accident took place due to rash and negligent driving on the part of the driver of the bus.

18. In ***Smt.Supla Devi and another versus Ramesh Kumar and others [Latest HLJ 2006 (HP) 906],*** it has been held in Para-14 as follows:-

> "A claimant has a choice of either applying for compensation under Section 166 of the Act in which event he must prove negligence on the part of the tort feasor or the claimant can also apply for compensation under Section 163-A of the Act where he need not prove negligence of any party. This Court has consistently taken the view that even when a claimant files a petition under Section 166 of the Act and courts while assessing the compensation must keep in mind the compensation which would have been payable to the claimant if he or she had approached the learned tribunal under Section 163-A of the Act. The compensation

> payable under Section 166 of the Act should not be less than the minimum amount payable under the structured formula under Section 163 of the Act….."

19. In ***Manju Devi and another versus Musafir Paswan and another [2005 ACJ 99],*** the Supreme Court in Paras-3 and 4 has held as follows:-

> "As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-.
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> We accordingly modify the award to be in a sum of Rs.2,25,000/- with interest as awarded. The appeal stands disposed of accordingly. No order as to costs."

20. In FAO No.248 of 2000 with Cross Objection No.545 of 2000 the case of the claimant / petitioners is that Kumari Mamta student of 10+1 class died in the accident. As per Ext.P-5 matriculation certificate deceased was 18 years of age. The tribunal has awarded Rs.1 lac lump-sum amount as compensation on account of death of Kumari Mamta and after adjusting Rs.50,000/- already paid to the petitioners the tribunal ultimately passed an award of

Rs.50,000/- as compensation in favour of the petitioners. The learned counsel for the claimants / petitioners has submitted that less compensation has been awarded to the claimants / petitioners on account of death of Kumari Mamta. On the contrary, learned counsel for the Corporation has urged that excess amount has been paid to the claimants / petitioners on account of death of Kumari Mamta. The deceased Kumari Mamta was a student and non earning person and, therefore, as per Second Schedule of the Act her income is to be taken Rs.15000/- per annum. She was 18 years of age and, therefore, multiplier of 16 is applicable in her case, therefore, compensation comes to Rs.15000 x 16 =Rs.2,40,000/- after adjusting Rs.50,000/- which the petitioners have already received, the parents are entitled to an amount of Rs.1,90,000/- compensation along with 9% interest per annum from the date of filing of the claim petition i.e. 4.4.1998 till deposit / payment. The compensation amount along with interest is to be shared by father and mother of the deceased in the ratio of 1:4.

21. In FAO No.252 of 2000 with Cross Objection No.433 of 2000, the case of the petitioners / claimants is that Maheshwar Singh died in the accident. As per certificate Ext.P-2 the age of the deceased Maheshwar Singh at the time of accident was 22 years. On the basis of material on record the tribunal has rightly assessed income of the deceased Rs.3000/- per month and dependency of the petitioners / claimants Rs.2000/- per month. The deceased was 22 years of age at the time of accident, he has left behind young widow, a

child and old parents. The tribunal has rightly applied multiplier of 16 and has correctly awarded Rs.3,84,000/- compensation on account of death of Maheshwar Singh. In addition to the aforesaid amount, the tribunal has rightly assessed Rs.15,000/- on account of conventional damages and has correctly assessed a sum of Rs.3,99,000/- or say Rs.4 lacs compensation on account of death of Maheshwar Singh. The tribunal after adjusting Rs.50,000/- already paid to the petitioners has rightly awarded an amount of Rs.3,50,000/- compensation to the petitioners. Out of the compensation, an amount of Rs.1,40,000/- with proportionate interest to widow petitioner No.1 Smt.Nirmala Devi, Rs.1,25,000/- with proportionate interest to petitioner No.2 minor child Master Sannu, Rs.75,000/- along with proportionate interest to petitioner No.3 Sharda Devi and Rs.10,000/- along with proportionate interest to petitioner No.4 Joginder Singh has been rightly apportioned by the tribunal.

22. In FAO No.253 of 2000 with Cross Objection No.453 of 2000 the case of the claimant / petitioners is that Balwant Singh aged 22 years student of B.A. Final died in the bus accident. The deceased left behind parents and three sisters. His father Udham Singh is aged 46 years and mother Gulab Devi is aged 42 years. On the basis of material on record, the tribunal has rightly taken income of the deceased Rs.4000/- per month. The tribunal has also taken into consideration that in normal course Balwant Singh was to be married shortly and he would not have spared more than Rs.1200/- per month

to his parents. Therefore, the dependency of the parents has been correctly taken Rs.1200/- per month by the tribunal. After taking into consideration the age of the deceased and the parents the tribunal has correctly applied multiplier of 15 and has rightly come to the conclusion that dependency in terms of money works out to Rs.2,16,000/-. In addition to the aforesaid amount of money, the petitioners were also held entitled to a sum of Rs.15,000/- on account of conventional damages. Thus, a total sum of Rs.2,31,000/- has been awarded to the petitioners / claimants and after adjusting Rs.50,000/- already received by the petitioners an award of Rs.1,81,000/- has been rightly passed in favour of the petitioners and against the Corporation on account of death of Balwant Singh. The award amount has also been rightly apportioned in the ratio of 1:4 in favour of father and mother of the deceased. No case for interference has been made out by either side.

23. In FAO No.293 of 2000 with Cross Objection No.568 of 2000 the case of the petitioners / claimants is that Kumari Lata student of +1 class died in the accident of bus bearing No.HP-07-2830. As per Ext.P-3 matriculation certificate deceased was 18 years of age. The tribunal has awarded Rs.1 lac lump-sum amount as compensation on account of death of Kumari Lata and after adjusting Rs.50,000/- already paid to the petitioners the tribunal ultimately passed an award of Rs.50,000/- as compensation in favour of the parents. The learned counsel for the claimants / petitioners has submitted that less

compensation has been awarded to the claimants / petitioners on account of death of Kumari Lata. On the contrary, learned counsel for the Corporation urged that excess amount has been paid to the claimants / petitioners on account of death of Kumari Lata. The deceased Kumari Lata was a student and non earning person and, therefore, as per Second Schedule of the Act her income is to be taken Rs.15000/- per annum. She was 18 years of age and, therefore, multiplier of 16 is applicable in her case, therefore, compensation comes to Rs.15000 x 16 =Rs.2,40,000/- after adjusting Rs.50,000/- which the petitioners have already received, the parents are entitled to an amount of Rs.1,90,000/- compensation along with 9% interest per annum from the date of filing of the claim petition i.e. 4.4.1998 till deposit / payment. The compensation amount along with interest is to be shared by father and mother of the deceased in the ratio of 1:4.

24. The result of above discussion is that FAO No.248 of 2000 is allowed and Cross Objection No.545 of 2000 is dismissed, an award of Rs.1,90,000/- is passed in favour of petitioners No.1 and 2, namely, Baldev Singh Thakur and Smt.Kala Devi and against Himachal Road Transport Corporation along with 9% interest per annum from the date of filing of the claim petition i.e. 4.4.1998 till deposit / payment. The compensation amount along with interest shall be shared by petitioner No.1 Baldev Singh Thakur, father and petitioner No.2 Smt.Kala Devi - mother of the deceased in the ratio of 1:4.

FAO No.293 of 2000 is allowed and Cross Objection No.568 of 2000 is dismissed, an award of Rs.1,90,000/- is passed in favour of petitioner No.1 – Joginder Singh and petitioner No.2 – Smt.Sharda Devi and against Himachal Road Trnasport Corporation along with 9% interest per annum from the date of filing of the claim petition i.e. 4.4.1998 till deposit / payment. The compensation amount along with interest shall be shared by petitioner No.1 Joginder Singh - father and petitioner No.2 Smt.Sharda Devi - mother of the deceased in the ratio of 1:4.

FAO No.252 of 2000 with Cross Objection No.463 of 2000 and FAO No.253 of 2000 with Cross Objection No.453 of 2000 are dismissed. No order as to costs.

(Kuldip Singh)
Judge.

August 21, 2007
(soni)

1. ***FAO No.248 of 2000 with C.O. No.545/2000:***

   Baldev Singh & Ors versus H.R.T.C.

2. ***FAO No.293 of 2000 with C.O. No.568/2000:***

   Joginder Singh & Ors. Versus H.R.T.C.

   For the appellants: Mr.Gulzar S. Rathore with Mr.Raman Sethi, Advocates.

   For the respondent: Mr.Ashok Sharma, Advocate.

3. ***FAO No.252 of 2000 with C.O.No.463/2000:***

   H.R.T.C. versus Nirmala Devi & Ors.

4. ***FAO No.253 of 2000 with C.O. No.453/2000:***:

   H.R.T.C. Versus Udham Singh & Ors.

   For the Appellant: Mr.Ashok Sharma, Advocate.

   For the respondents: Mr.Gulzar S. Rathore & Mr.Raman Sethi, Advocates.

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